

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO RODRIGUEZ,

Plaintiff,

v.

PATRICK J. POWELL, et al.,

Defendants.

No. 2:25-cv-0817 DJC AC PS

ORDER and

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding in this case in pro se and in forma pauperis. Plaintiff's initial complaint was rejected pursuant to the screening process that accompanies *in forma pauperis* status, and plaintiff was ordered to file an amended complaint by June 17, 2025. ECF No. 6. Plaintiff asked for a 30-day extension of time (ECF No. 7), and that request was granted. ECF No. 8. Plaintiff moved for a second extension of time because he changed addresses. ECF No. 9. The court granted this request but noted that no further extension of time will be granted absent a showing of good cause. ECF No. 10. Plaintiff did not file an amended complaint and instead filed a motion to appoint counsel on September 15, 2025. ECF No. 12. The court denied the motion to appoint counsel and issued an order to show cause no later than October 24, 2025, why the case should not be dismissed for failure to prosecute. ECF No. 13.

On October 20, 2025, plaintiff filed a third motion for a 30-day extension of time and a second motion to appoint counsel. ECF No. 14. Plaintiff asserts he has been in High Desert State Prison since June 2, 2025, and mail takes time there, and that he needs counsel because his case is

1 complex. Id. at 1. Plaintiff does not provide an amended complaint or any new information with  
2 respect to his need for counsel or additional time to file an amended complaint.

3 The motion for an extension of time and to appoint counsel (ECF No. 14) is DENEID.  
4 Plaintiff asserts that mail is a problem at his location, but he has made 5 filings during his time at  
5 High Desert State Prison and is plainly able to communicate with the court. See ECF Nos. 7, 9,  
6 11, 12, 14. Plaintiff has not articulated any new information about his need for counsel, and the  
7 request is accordingly denied on the same basis it was previously denied. ECF No. 13. Further,  
8 the court concludes that plaintiff is unable to prosecute this case at this time. Despite multiple  
9 extensions of time, plaintiff has failed to file the required amended complaint, and he has not  
10 provided adequate rationale for this failure. The case cannot proceed without an operative  
11 pleading, and the court cannot indefinitely postpone the filing of an amended complaint. Plaintiff  
12 has been expressly warned that the consequence of continued failure to file an amended  
13 complaint would be a recommendation of dismissal for failure to prosecute, and yet has persisted  
14 in his failure.

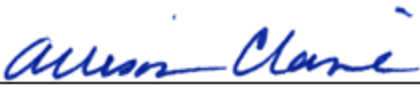
15 In recommending this action be dismissed for failure to prosecute, the court has  
16 considered “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to  
17 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
18 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” Ferdik v.  
19 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). Because this case cannot  
20 move forward without plaintiff’s participation, the court finds the factors weigh in favor of  
21 dismissal.

22 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for extension of time and  
23 second motion to appoint counsel (ECF No. 14) is DENIED because plaintiff fails to show good  
24 cause or articulate any new information. Further, IT IS HEREBY RECOMMENDED that this  
25 action be dismissed, without prejudice, for lack of prosecution. See Fed. R. Civ. P. 41(b); Local  
26 Rule 110.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)

1 days after being served with these findings and recommendations, plaintiff may file written  
2 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s  
3 Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file  
4 objections within the specified time may waive the right to appeal the District Court’s order.  
5 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: October 29, 2025

7   
8 ALLISON CLAIRE  
9 UNITED STATES MAGISTRATE JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28